IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

..

:: ORDER ::

Shrangari Devi Vs. Board of Revenue for Rajasthan at Ajmer & Ors.

S.B.CIVIL WRIT PETITION NO.1499/2006

Date of order :: 20.04.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.R.S.Chundawat, for the petitioner.

BY THE COURT:

This writ petition has been submitted against the order dated 11.08.2005 passed by the Board of Revenue for Rajasthan at Ajmer in Revision No.Col./663/2000/Bikaner.

Subject matter of this writ petition relates to 4 bighas and 17 biswas of land situated in Murabba No.156/61 of Chak 1 PHM (A) comprised in Kila Nos.11 (2 biswas), 13 (15 biswas), 18 & 19 (2 bighas) and 22 & 23 (2 bighas) sought to be allotted as small patch land to the petitioner by the Sub-

Divisional Officer, Khajuwala by way of an order dated 16.04.1998 (Annex.1) that reads as under:-

> "16.4.98
>
> पत्रावली पेश हुई। नोटिस तामील एवं बाद चस्पादंगी के प्राप्त हुए। जो शामिल पत्रावली किये गये। अप्रार्थी को आवाज लगवाई गई दोनों ही अनुपस्थित रहे। दोनों अप्रार्थीयों के हाजिर नहीं होने के कारण प्रार्थीया को स्मालपेच में चाहा गया रकबा चक 1 पी.एच.एम. (ए) के मु.न. 156/61 के कि.न. 11 में 2 बिस्वा, 13 में 15 बिस्वा, 18, 19 में 2) बीघा 22, 23 में 2) बीघा कुल 4.17 बीघा अ.क. राज.उपनि.इंगानप क्षेत्र में सरकारी भूमि का आवंटन एवं विक्रय नियम 1975 के नियम 14 के अनुसार तथा नियम 17(1) की निर्धारित कीमत से दुगुनी कीमत 1600/- रू. प्रतिबीघा से कुल 7760/- रू. में स्माल पेच आवंटन की जाती है। आवंप्ति भूमि की कीमत 5 समान किश्तों में वसूल होगी। प्रथम किश्त की राशि 1552/- रू. जमा कराने के पश्चात् आवंटन आदेश जारी किया जावें।"

The aforesaid order dated 16.04.1998 was challenged by way of two appeals before the Revenue Appellate Authority, Bikaner. Appeal No.37/1999 was filed by the Executive Engineer, Irrigation Department, Anupgarh Division-II, Gharsana; and appeal No.57/1999 was filed by one Satyanarain asserting himself to be the Chairman of Baba Ramdev Trust Samiti. It was contended before the Revenue Appellate Authority that the aforesaid allotment of 4 bighas and 17 biswas of land to the petitioner was wholly illegal inasmuch as the petitioner Smt.Shrangari Devi was not having

any land in or around Chak 1 PHM; and the assertion made by the petitioner in her affidavit of having the land in Chak 1 PHM was wrong as her land was situated nearly 3 kms. away in Chak 7 KYD (B). It was contended that the petitioner was not entitled to get the land allotted as a small patch because such allotment could only be made to a tenant of adjoining land. It was also contended that the Patwari concerned had not rightly reported about the site because on the land in question government quarters were situated and the office of the Irrigation Department was also situated with stores. Earlier, other tenants also made applications for allotment of this land as small patch land and thereupon the Patwari has shown the land to be falling in abadi with irrigation colony; and those applications were still pending. It was also contended that the land in question was not an unoccupied land and could not have been allotted. It appears that in appeal No.57/1999 it was also submitted that a temple of Baba Ramdev was situated on the land in question and that husband of the petitioner was an employee in the Irrigation Department and allotment was obtained by the petitioner while submitting false affidavit through her husband. It further appears that an objection was raised about the competence of appeal No.57/1999 by another person Bhikha Ram submitting that he was authorised by the Trust in the matter

and he was not interested in prosecuting the appeal in the name of the Trust. Such application by Bhikha Ram was of course rejected by the learned Revenue Appellate Authority, but on the merits of the case, the learned Revenue Appellate Authority after considering record of the proceedings observed that the petitioner made an application for allotment of small patch land and thereupon Tehsildar instructed Patwari to make a report and the Patwari had reported of the petitioner having 21 bighas of uncommand land in Murabba No.177/26 in Kila Nos.1, 6 to 25 at Chak 7 KYD (B). The Patwari and the Tehsildar made the comments that land in question sought as small patch was a government land. It was observed by the learned Revenue Appellate Authority that the matter was registered in case No.8/1998 and adjoining tenants were noticed but they did not appear and, therefore, allotment was made in favour of the petitioner. The learned Revenue Appellate Authority further observed that no any application of either of the appellants was found pending in the record and, therefore, they were not entitled to get the land allotted.

So far the aspect of existence of office, quarters and godowns of Irrigation Department and so also of Baba

Ramdev Temple on the land in question were concerned, the learned Revenue Appellate Authority observed with reference to a report of Tehsildar, Khajuwala dated 24.05.1999 sent to the Sub-Divisional Officer, Khajuwala that on 2 biswas of land in Kila No.11 of Murabba No.156/61, Baba Ramdev Temple was existing and on 1 bigha of uncommand land in kila No.19, there were one store, two quarters and one Patwar House of the Irrigation Department and remaining 3 bighas and 15 biswas of land in Kila Nos.18, 13, 22 and 23 was in possession of the petitioner; and the Sub-Divisional Officer, Khajuwala with the consent of the petitioner-Shrangari Devi declared such 1 bigha and 2 biswas of land of kila Nos.11 and 13 as the government land reducing it from the allotment made to her. On these considerations, the learned Revenue Appellate Authority opined that the petitioner was in possession of the unoccupied land and, therefore, the contention raised on behalf of the appellants were now not carrying any substance. Both the appeals were accordingly, dismissed by the order dated 13.06.2000 (Annex.2).

The order passed by the learned Revenue Appellate Authority on 13.06.2000 was taken in revision by the Executive Engineer and from the title stated in the order passed in the revision (Annex.3), it appears that the allotting

authority (Sub-Divisional Officer, Khajuwala) and the Tehsildar (Revenue), Khajuwala also joined as petitioners before the Board of Revenue. Be that as it may, before the learned Member of the Board of Revenue, the present petitioner, non-petitioner therein, moved an application and submitted that disputed allotment of 4 bighas and 17 biswas of land had already been cancelled by the Collector, Bikaner by his order dated 09.07.2002 and, therefore, the revision petition was rendered infructuous. Learned Member of the Board after perusing the order dated 09.07.2002 passed by the Collector found that by the force of the said order, the basis on which the Revenue Appellate Authority dismissed the appeal was removed and, therefore, the order passed by the Revenue Appellate Authority, Bikaner in appeal No.57/1999 could not be maintained. The revision petition was, accordingly, ordered to be allowed and the order passed by the Revenue Appellate Authority dated 13.06.2000 was set aside.

The order dated 11.08.2005 passed by the Board of Revenue for Rajasthan, Ajmer (Annex.3) has been sought to be assailed in this writ petition. The petitioner has averred that she was resident of Chak 7 KYD Khajuwala District Bikaner; that she was allotted 4 bighas 17 biswas of land as small

patch land in Chak 1 PHM by the order dated 16.04.1998 (Annex.1); that the respondent No.3 filed an appeal that was dismissed by the judgment dated 13.06.2000 (Annex.2); that the revision petition filed before the Board was allowed by the judgment dated 11.08.2005 (Annex.3) and, therefore, being dissatisfied with the judgment dated 11.08.2005, the petitioner was submitting this writ petition. The grounds taken in this writ petition are: (a) the Board of Revenue passed the judgment without properly considering the facts and circumstances and the judgment of Hon'ble Supreme Court; (b) that after considering all the facts and circumstances and law, the learned Revenue Appellate Authority passed the reasoned order and the Board, without properly going through the merits of the case, decided the revision petition on the basis of the judgment of Hon'ble Supreme Court that has no application;and (c) that the order passed by the Board of Revenue is not a reasoned one. The petitioner has prayed for the relief of quashing and setting aside of the order dated 11.08.2005 (Annex.3).

In view of cryptic and cursory averments taken in the writ petition, at the time of considering this writ petition, learned counsel for the petitioner was questioned about the order dated 09.07.2002 said to have been passed by the

Collector, Bikaner that is the basis of the impugned order passed by the learned Member of the Board. Thereupon, learned counsel for the petitioner has placed on record a photostat of the order dated 09.07.2002 passed by the Collector, Bikaner in case No.48/2001.

A perusal of the order dated 09.07.2002 shows that the learned Collector after considering and examining the original allotment record found that the application was made on 10.04.1998 before the allotting authority and the affidavit filed with the application was verified on 15.04.1998. However, it was noticed that on the reverse of the application, Patwari made a report on 06.03.1998 and the Tehsildar forwarded the application on 17.03.1998; and, therefore, it was apparent that even before filing of the application, the revenue authorities made the reports squarely contrary to the requirements of procedure. It was also noticed that the petitioner had stated herself to be an allottee of Murraba No.177/26 of Chak 7 KYD in the application whereas in the affidavit stated herself to be an allottee of Chak 1 PHM. The learned Collector found that the land in question allotted to the petitioner as small patch was not an adjoining land and she was an allottee of different Chak; and the disputed allotment had been obtained by stating wrong facts. It was

noticed that under the rules, land for small patch allotment was available to the adjoining tenants who had not been properly noticed and it was further found that the land in question was having various quarters,store and Patwar house of the Irrigation Department and yet it was sought to be allotted. Before the learned Collector, it was also contended that the Revenue Appellate Authority had already dismissed the appeal against the allotment. However, the learned Collector observed that considerations in the appeal were limited to the subject matter thereof and the legality of the allotment had not been examined with reference to Rule 22 (3) of the Rules. The learned Collector found the allotment to have been made without proper enquiry and on the basis of wrong facts and, therefore, ordered cancellation of such allotment and directed the land to be recorded as government land and to be taken over in possession by the Tehsildar.

Having examined the material placed on record and the orders passed in this case by the learned Revenue Appellate Authority, this Court is satisfied that the allotment in question was sought to be obtained in a wholly clandestine manner and the learned Collector has rightly proceeded to curb the unfair designs. After the facts were apparent before the Board of Revenue and seem to have been divulged by the petitioner

herself that allotment had already been cancelled by the Collector by the order dated 09.07.2002, the learned Member of the Board has done nothing except recording logical conclusion of the order passed by the Collector. In the face of such undenied and undeniable facts, it is rather inexplicable as to what questions the petitioner seeks to put against the order passed by the Board?

The sum and substance of the entire of the averments in this writ petition has been noticed hereinbefore and significantly not a single word has been stated in the entire writ petition about the order dated 09.07.2002. A perusal of the order dated 09.07.2002 makes it apparent that the learned Collector has examined the entire record of the allotment proceedings and has found serious shortcomings in the conduct of the allotting authority and so also of the Tehsildar and the Patwari. The petitioner was not even a tenant of adjoining land within the meaning of Rule 14 of the Rajasthan Colonisation (Allotment and Sale of Government Land in the Indira Gandhi Canal Colony Area) Rules, 1975; and though several other adjoining tenants were available, in the name of an application of the petitioner and so-called non-appearance of adjoining tenants, such allotment was sought to be made. It has nowhere been shown that the land in

question was notified by the allotting authority showing its intention to make such allotment. This Court in the case of Smt.Sunder Vs. Board of Revenue & others : 2005(7) RDD 2599 (Raj) after dealing with the entire scheme of Rules with reference to Rule 14 has pointed out,-

> "Providing equal opportunity by fair procedure to similarly placed persons (the adjoining tenants) remains innate and intrinsic in the operation of such Rule. A notice to all of them of the intention to allot and calling of applications is inherent and inbuilt in the process of such grant of Government land. Rules 9, 10 and 11, to the extent applicable, are not overridden but are directly applicable to such allotment. Hence, there is no omission as suggested by the learned counsel. It would have been wholly superfluous to state in Rule 14 that other procedure would remain the same."

It has further been pointed out that,-

> "The matter could still be viewed from yet other angle. If it be suggested that small patch could be allotted on an application only, without a proper notice to all the concerned persons, the same would clearly open the gates and rooms for absolute arbitrariness and such a rule would be directly offending the requirements of fair play on the part of the Government while seeking to make allotments of the Government land."

This Court finds that present case is an apposite example of total arbitrariness and unfair play on the part of the

allotting authority and has rightly been curbed against by the learned Collector.

Not that all the facts were not available before the learned Revenue Appellate Authority. It appears from the order passed by the Revenue Appellate Authority that significant and relevant facts have been simply ignored and instead, in the name of reduction of 1 bigha and 2 biswas of land from out of disputed land, the learned Revenue Appellate Authority remained rest contended to believe that other part of the allotment could be maintained. All other submissions and arguments have totally been omitted from consideration by the learned Revenue Appellate Authority. Even if learned Revenue Appellate Authority preferred to ignore the truth directly available on record that allotment was highly objectionable and was directly indicative of unfair methods, it is rather strange that learned Revenue Appellate Authority chose to ignore the consequence of even the admitted fact that on at least 1 bigha and 2 biswas of land from out of 4 bighas and 17 biswas sought to be allotted, there were other structures standing and the land was in possession of others. Such facts themselves were sufficient to find that the report as made by the Patwari and as endorsed by the Tehsildar and as accepted by the Allotting Authority was not correct. In any

case, the learned Collector has adopted the proceedings in accordance with law and has rightly set aside such an illegal and rather unfair allotment. The learned Member of the Board has of course not thoroughly examined the order passed by the Revenue Appellate Authority but has rightly stated that the order passed by the Revenue Appellate Authority was required to be set aside as a natural consequence of the order passed by the Collector dated 09.07.2002.

This writ petition remains absolutely bereft of substance and is, therefore, dismissed summarily.

Having regard to the circumstances of the case, a copy of this order be sent to the Secretary, Revenue/Colonisation Department.

(DINESH MAHESHWARI), J.

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